REPORT

Of the Committee of Elections, to whom was referred the petition of sundry citizens of the District of Norfolk, in the state of Massachusetts, remonstrating against the return of John Bailey, Esq. as a Representative of said District, in the 18th Congress.

FEBRUARY 20, 1824.

Read, and ordered to lie upon the table.

The Committee of Elections to which was referred the petition of sundry citizens and inhabitants of the district of Norfolk, in the commonwealth of Massachusetts, praying, for the reasons therein set forth, that John Bailey, the member returned from said district to the present Congress, may not be admitted to a seat in this House, have had the same under consideration and submit the following

REPORT:

The petitioners found their objections to the right of Mr. Bailey to a seat in this House, on the alleged fact that he is ineligible, not being possessed of those qualifications which, by the Constitution of the United States, are indispensable to the holding of a seat in Congress; "because, at the time the election was held, at which the said Bailey was supposed to have been chosen, he was not an inhabitant of Massachusetts, but then was, and for many years before had been, and still is, an inhabitant of the City of Washington, in the District of Columbia. In pursuance of the authority vested in the committee by the resolution of the House, they have procured a statement from the Hon. John Q. Adams, Secretary of State, and they have obtained the affidavit of Charles Bulfinch, Esq. of the City of Washington. The Secretary states, that Mr. Bailey was appointed by him a clerk in the Department of State, on the first day of October, 1817, at which time he was a resident of Massachusetts, and that he immediately repaired to Washington and entered on the duties of his appointment, and that he has continued to reside in this city from that time in the capacity of a clerk in the Department of State, until the 21st day of October, 1823; at which time he resigned the appointment. He further states, that he has never known Mr. Bailey to exercise any of the rights of citizenship within the

District, but always understood him as considering Massachusetts as his home, and his residence here as only temporary; and that he had considered Mr. Bailey as eligible, &c. Charles Bulfinch, Esq. testifies, that he has known Mr. Bailey in this city since January, 1818; that he has resided in a public Hotel, with occasional absences on visits to Massachusetts until his marriage in this city, which took place about a year since, at which time he took his residence in the family of his wife's mother, where he still remains; that he knows of no instance of his exercising any of the rights of citizenship in this District. It appears that the election at which Mr. Bailey was chosen, was held on the 8th day of September, 1823, at which time he was actually residing in this city in the capacity of a clerk in the State Department. The 2d Section of the first Article of the Constitution of the United States provides, "that no person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, *and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.*"

The subject referred to the committee they have viewed as one of great national consequence, and they have entered upon the consideration of it with a diffidence corresponding with its importance. The difficulty attending the interpretation of constitutional provisions, which depend on the construction of a particular word, renders it necessary to a complete explication, to obtain, if possible, a knowledge of the reasons which influenced the framers of the Constitution, in the adoption and use of the word "inhabitant," and to make an endeavour at ascertaining, as far as practicable, whether they intended it to apply, according to its common acceptation, to the persons whose abode, living, ordinary habitation, or home, should be within the state in which they should be chosen, or, on the contrary, according to some uncommon or technical meaning. In what sense this word was intended to apply, can only be determined by reference to the Constitution itself: but, some light may, perhaps, be thrown on the subject, by consulting the history of the times in which that Constitution was formed. It is well known that, at that time, much difference of opinion existed throughout the Union, as to what form of Government would be best suited to the situation of the country; and, that the difficulties which the Convention had to encounter, in adjusting the powers that were to be conferred on the General Government, and those which were to be reserved to the States, were of no ordinary kind. That body was, for a long time, divided into three different parties, unequal in numbers, but alike zealous in support of their favorite theories; one was for a Government of a consolidated form, in which the State Governments would scarcely have sustained their existence; another was for a system of the federal complexion, differing but little from the original compact, under the articles of confederation; and a third were in favour of a Government partaking both of the national and federative principle. Those who were in favor of retaining to the States the greatest portion of their so-

vereignty, were extremely assiduous and persevering, and it was with much reluctance that they finally agreed to unite, in that spirit of mutual concession and compromise, out of which resulted the adoption of the present constitution. This class of politicians had imbibed the opinion, that almost any features of a national character, which should be incorporated into the constitution, would, in the progress of the Government, absorb the most essential powers of the states, and render them little more than subordinate corporations; and it was, no doubt, owing to their exertions, that many of those provisions were inserted in the constitution, which go to sustain the distinctive character of the several states as component parts of the general Government, and which were intended as effectual checks to its progressive influence. Of this nature is the provision that the states shall be equally represented in the Senate; that the votes in the House of Representatives, in deciding the election of President of the United States, shall be by states, each state having one vote; and that none but the inhabitants of the respective states should represent them in either House of Congress. It was supposed, that, unless a provision was made, by which state distinctions and state feelings were to be preserved, there would be danger of a people who had so much intercourse with each other, losing their attachment for the state governments, and thereby add to the powers of the general Government, which many thought, in its origin, alarming in their extent. In connection with this, there was still another view of this subject, which, in all probability, had its influence with the framers of the constitution, and induced them to confine the people to the election of Senators and Representatives from among the inhabitants of their respective states. They could not but anticipate, that, in the progress of time, the General Government would necessarily concentrate, at the seat of that Government, a number of persons who would be engaged in the different branches of its administration, and whose long habit of dependence on those who might fill the chief places in the Government, would do much towards enlisting them in support of almost any cause which the administration might wish to promote. Every person acquainted with human nature, must be fully satisfied of the bias which long continuance in particular situations and associations is likely to produce on the mind; and statesmen, so well versed in political history, as were the members of the federal convention in forming a constitution of government, could not exclude from their minds the course of policy pursued by the British government in this respect. It was well known to them, that, by means of the election of favorites to the House of Commons, through the direct influence of the Government, the ministry were enabled to govern that country in contempt of the public will, thereby rendering representation a mere form. The true theory of representative government is bottomed in the principle, that public opinion is to direct the legislation of the country, subject to the provisions of the constitution, and the most effectual means of securing a due regard to the public interest, and a proper solicitude to relieve the public inconveniencies, is, to have the

representative selected from the bosom of that society which is composed of his constituents. A knowledge of the character of a people for whom one is called to act, is truly necessary, as well as of the views which they entertain of public affairs. This can only be acquired by mingling in their company, and joining in their conversations: but, above all, that reciprocity of feeling and identity of interest, so necessary to relations of this kind, and which operates as a mutual guarantee between the parties, can only exist, in its full extent, among members of the same community. All these reasons conspire to render it absolutely necessary that every well regulated Government should have, in its constitution, a provision which should embrace those advantages; and there can be no doubt it was from considerations of this kind, that the convention wisely determined to insert in the constitution that provision which declares no person shall be a member of either House of Congress, "who shall not, at the time of the election, be an inhabitant of that state in which he shall be chosen," meaning, thereby, that they should be bona fide members of the state, subject to all the requisitions of its laws, and entitled to all the privileges and advantages which they confer. That this subject occupied the particular attention of the convention, and that the word inhabitant was not introduced without due consideration and discussion, is evident from the journals, by which it appears that, in the draft of a constitution reported by the committee of five, on the 6th of August, the word resident was contained, and that, on the 8th of the same month, the convention amended that report, by striking out "resident," and inserting "inhabitant," as a stronger term, intended more clearly to express their intention that the persons to be elected should be completely identified with the state in which they were to be chosen. Having examined the case in connection with the probable reasons which influenced the minds of the members of the convention, and led to the use of the word inhabitant in the constitution, in relation to Senators and Representatives in Congress, it may not be improper, before an attempt is made at a further definition of the word, a little to consider that of citizen, with the view of shewing that many of the misconceptions in respect to the former, have arisen from confounding it with the latter. The word inhabitant comprehends a simple fact, locality of existence; that of citizen, a combination of civil privileges, some of which may be enjoyed in any of the states in the Union. The word citizen may properly be construed to mean a member of a political society, and although he might be absent for years, and cease to be an inhabitant of its territory, his rights of citizenship may not be thereby forfeited, but may be resumed whenever he may choose to return; or, indeed, such of them as are not interdicted by the requisition of inhabitancy, may be considered as reserved; as, for instance, in many of the states, a person who, by reason of absence, would not be eligible to a seat in the legislature, might be appointed a judge of any of their courts. The reason of this is obvious: the judges are clothed with no discretionary powers about which the public opinion is necessary to be consult-

ed; they are not makers, but expounders of the law, and the constitution and statutes of the state are the only authorities they have to consult and obey.

It is not within the knowledge of the committee, that any of the states have constitutional, or legal, provisions, on the subject of expatriation, unless, indeed, the laws in relation to the settlement of paupers should be considered of that description; we are, therefore, left without any certain rule by which to determine, what length of absence shall amount to a forfeiture of citizenship. Perhaps, the only safe criterion by which to determine the matter, would be to consider every person, who removes from one part of the United States, and settles in another, as ceasing to be a citizen of the state from which he has removed, whenever, by the constitution, or laws of the place where he has taken up his residence, he is entitled to exercise the rights of a citizen there. From what has already been said, it must appear, that the words citizen and inhabitant, cannot be considered as synonymous; but, it may not be improper to quote some authority in support of this opinion. The difference of situation between the people of the United States, and that of any people of Europe, in a political point of view, renders it difficult to find in the writings, on either national or municipal law, in that country, any thing exactly in point; all, however, agree in considering inhabitant, as connected with habitation and abode. Thus, Vattel says, (in book 1, chap. 19, sec. 213,) "The inhabitants, as distinguished from citizens, are strangers, who are permitted to settle and stay in the country. Bound by their residence to the Society, they are subject to the laws of the state, while they reside there, and they are bound to defend it, while it grants them protection, though they do not participate in all the rights of citizens." If, according to the doctrine here laid down, the mere settlement and stay in a country, where the laws precluded those who thus settled from becoming members of the civil society, gives the character of inhabitants to such persons, it clearly establishes the distinction between citizen and inhabitant, and shews that the latter appellation is derived from habitation and abode, and not from the political privileges they are entitled to exercise. Jacobs' law dictionary defines "inhabitant." to be "a dweller, or house-holder, in any place, as inhabitants of the ville, are house-holders in the ville. The word inhabitants, includes tenants in fee-simple, tenants for life, &c. tenants at will, and he who has no interest but only his habitation and dwelling." But should these authorities not be considered conclusive as to the definition of the word inhabitant, let the constitutions of the several states be examined, and see if, in some of them, the word has not received a construction exactly similar to what is here contended for. The constitution of New Hampshire contains the following declaration: "And every person qualified as this constitution provides, shall be considered an inhabitant, for the purpose of electing, and being elected, into any office or place within this state, in the town, parish, and plantation, where he dwelleth or hath his home." The constitution of Massachusettss, declares that,

"to remove all doubts concerning the word inhabitant, in this constitution, every person shall be considered an inhabitant (for the purpose of electing, and being elected, into any office or place within this state,) in that town, district, or plantation, where he dwelleth or hath his home." The constitution of New Hampshire, was adopted in 1792, and that of Massachusetts, in 1780; the former five years after, and the latter seven years before, the formation of the constitution of the United States, and the word inhabitant, is used in these constitutions in the same relation to the members of the state legislature, that it is in the constitution of the United States, to members of Congress. These constitutions were formed by conventions, in which were many of the most learned and practical statesmen of that day, and the declarations which they contain of the manner in which they intended the word inhabitant should be understood, ought to be considered as settling, conclusively, its true and legitimate meaning. Nearly all of the state constitutions require either inhabitancy, or residence, as one of the qualifications of representatives in the legislature; and in those of Delaware, Georgia, and Ohio, a saving clause is inserted in favor of such as may be absent on the public business of the state, or of the United States: thus, clearly indicating the opinion, that absence from the state divests the person of the character of inhabitant. The act of Congress of the first of March, 1790, entitled "An act providing for the enumeration of the inhabitants of the United States," affords another evidence of the same construction of the word inhabitant: the act provides, "that the Marshals of the several districts of the United States, shall be, and they are hereby, authorized to cause the number of the inhabitants, within their respective districts, to be taken, &c." and by the same act, the Marshal is required to make oath, that he will cause to be made a perfect enumeration and description, of all persons resident within his district, &c. By which it appears, that, in the opinion of Congress, at that time, the inhabitants of the respective districts, were the persons residing or living therein. The same principle is also recognized in the act of Congress, "to establish the judicial courts of the United States," passed in 1789.

In the statement made by the Secretary of State, he refers to the practice of the Legislature of Massachusetts, in cases embracing the same principles, which are involved in the one under consideration; these, however, cannot be resorted to as precedents, unless it be made to appear that the question has been discussed and decided in that body. The existence of the cases, and suffering them to pass by without investigation, is no evidence that they were in conformity with the constitution of the state. To contest the election of a person who is the choice of the people, is a very unpleasant task; one that few will undertake; and from that cause alone, persons not eligible, may have been permitted to retain seats in legislative bodies. But, it does not follow from this, that it was not an infraction of the principles of the constitution. But, it is contended by Mr. Bailey, that, as he was in the employ of the General Government while in this district, and had

expressed an intention of returning to Massachusetts, that he still remains an inhabitant of that state; but the committee are unable to perceive the force of the reasoning by which this position is attempted to be maintained. It is true, that, by writers on the laws of nations, embassadors and other agents who go out as such from one Government to reside near that of another, are considered as carrying with them the sovereignty of the Government to which they belong; that their rights as citizens are not impaired by such absence, and that children born in the houses they occupy, are considered as born within the territory and jurisdiction of the Government, in whose service they are. But the analogy between the cases is not discovered; the one is the case of an agent in a foreign country, not possessing the capacity by residence in that country, to become one of its citizens, or to lose his allegiance to the country from which he comes; the other is, that of a person employed in the service of the General Government within its territory, but without the limits of the state of which he claims to be an inhabitant. That which appertains to Ministers of this Government, who represent the sovereignty of the nation in foreign countries, whatever it may be, cannot be supposed to attach to those in subordinate employments at home. The relation which the states bear to each other, is very different from that which the Union bears to foreign Governments; the several states, by their own constitutions, prescribed the conditions by which the citizens of one state shall become citizens of another; and over this subject the Government of the Union has no control: it would, therefore, be altogether fallacious to pretend that the bare holding of an appointment under the General Government, and residing for years in one of the states, should preclude the holder from being an inhabitant and citizen of such state, when, by its constitution and laws, he is recognized as such. How the expression of an intention to return at some future time, to the state from which the person had come, can effect the citizenship and inhabitancy thus acquired, is impossible to comprehend. If citizenship in one part of the Union was only to be acquired by a formal renunciation of allegiance to the state from which the person came, previous to his being admitted to the rights of citizenship in the state to which he had removed, the expression of an intention to return would be of importance; but, as it is, it can have no bearing on the case: the doctrine is not applicable to citizens of this confederacy removing from one state and settling in another; nor can it, in the present case, be considered as going to establish inhabitancy in Massachusetts, when the fact is conceded that, at the time of the election, and for nearly six years before, Mr. Bailey was actually an inhabitant of the City of Washington, in the District of Columbia; and by the Charter of the City, and the laws in force in the District, was, to all intents and purposes, as much an inhabitant thereof, as though he had been born in, and resided there, during the whole period of his life; and, the refusal to exercise the rights of a citizen can be of no consequence in the case. It is not the exercise of privileges that constitutes a citizen; it is being a citizen that gives the title to those

privileges. But, there is one other circumstance attending this case that remains to be noticed, and which, it is presumed, cannot fail to explain the true character of Mr. Bailey's residence in the District of Columbia; the ground he assumes is, that, although he was resident in the District, his domicil was his father's house in Massachusetts. Vattel says, (Book 1, Chap. 19, Sec. 218,) "*The natural or original domicil,*" is that given us by our birth, where our father had his; and we are considered as retaining it, till we have abandoned it, in order to choose another. The *domicil acquired*, is that where we settle by our choice." A question now presents itself for solution. What shall be considered an abandonment of the *natural or original domicil?* The reason why the father's house should be considered as the domicil of the son, is, that previous to the marriage of the children, they all constitute but one family, of which the father is the head, and his house their common home, so long as they choose to remain in it; but, if the son absents himself for years, and, in the mean time, marries a wife, he then assumes the character of the head of a family himself; and the relation in which he before stood to his father's family is thereby entirely changed, and the original domicil must be considered as abandoned, and a new one established where he and his wife continue to reside. This is precisely Mr. Bailey's case; he had left his father's house in Massachusetts, and taken up his residence in Washington City, where he had remained for nearly six years, and where he was at the time of the election; he had married a wife in this city, and his habitation was with the family of her mother; can he, thus situated, have any reasonable ground on which to claim that he is an inhabitant of Massachusetts? The opinion is entertained by some, that the Government of the District of Columbia being rather of the anomalous character, a residence here would not carry with it the same consequences that would attend the settlement in one of the states of the Union; but the distinction, as applicable to the present case, the committee have not been able to discover. It has, also, been suggested that, as the United States have the exclusive jurisdiction over the District, that each state may be considered as possessing a part, and, that although a person formerly a citizen of Massachusetts, or of any other state, may be resident here, yet he is not out of the jurisdiction of his own state. This is an argument more subtile than sound and conclusive. If that view be correct, the limits of the individual states will be found to be vastly more extensive than was ever heretofore supposed; because the same rule that will apply to the District of Columbia, will, also, apply to the whole of the territory purchased by the General Government, either from individual states, or foreign nations. The doctrine is manifestly erroneous. The rights and interests of the individual states, in every thing of a national character, are merged in those of the General Government, the powers of which, within its sphere, are complete and indivisible.

The committee have carefully, and they trust impartially, considered the subject referred to them; they have examined it in every

aspect in which it has presented itself to their minds; they have assiduously endeavored to ascertain the true intent and meaning of that part of the Constitution of the United States by which the case is to be tested and decided; and they have presented to the House some of the reasons which have induced the conclusion to which they have arrived. They regret, extremely, that the duty which they owe to themselves, to the House and to the nation, would not permit them to accord in opinion with the citizens of that portion of the state of Massachusetts immediately interested in the decision of this question: but, believing as they do, that the choice of that district was made in direct opposition to an express provision of the Constitution of the United States, they respectfully submit the following resolution:

Resolved, That John Bailey is not entitled to a seat in this House.

The Commonwealth of Massachusetts to all People to whom these Presents shall come, Greeting:

Know ye, That John Bailey, Esquire, on the eighth day of September, in the year of our Lord one thousand eight hundred and twenty-three, was chosen by the people of this commonwealth, legally qualified therefor, a Representative, to represent them in the Congress of the United States of America, for the term by the Constitution of the said United States expressed, commencing the fourth day of March, one thousand eight hundred twenty-three, at the time and places, and in the manner of holding elections, prescribed by our Legislature, agreeably to the powers therein vested by the Constitution aforesaid.

Given under our seal.—Witness His Excellency William Eustis, our Governor, at Boston, the sixteenth day of October, A. D. one thousand eight hundred and twenty-three.

W. EUSTIS.

By his Excellency the Governor:

ALDEN BRADFORD, *Secretary.*

To the Honorable the House of Representatives of the United States in Congress assembled.

The undersigned, being inhabitants of the district of Norfolk, in the commonwealth of Massachusetts, and duly qualified voters for a Representative of said district in the Congress of the United States, do respectfully petition and remonstrate with your honorable body, against the return of John Bailey, Esq. as a Representative of said district, in the Eighteenth Congress of the United States; and do

respectfully pray that the said Bailey may not be admitted to a seat in said Congress, as the Representative of said district, for the following reasons:

Because, by the first section of the first article of the Constitution of the United States, it is provided, that no person shall be a Representative, who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Because, at the time when the election was held, at which the said Bailey was supposed to have been chosen, he was not an inhabitant of the commonwealth of Massachusetts, but then was, and for many years before had been, and still is, as the undersigned have been informed and verily believe, an inhabitant of the city of Washington, and District of Columbia; and, therefore, was not eligible as a Representative of said district, or any other district within said commonwealth, by the express letter, and in conformity with the true spirit and intention, of the Constitution of the United States.

Samuel D. Hixon,
Nath'l Leonard, jun.
Oliver Johnson,
Ransel Jones,
Hiram Jones,
Thom. E. Clark,
Charles Richards,
Willard Morse,
Solomon Richards,
George Johnson,
Isaac Johnson,
Joel Johnson,
Luther Gay,
Elijah Glover,
Warren Johnson,
Jedidiah Snow,
Thomas Glover.

In answer to the questions proposed to me, by the Committee of Elections, of the House of Representatives of the United States, in relation to Mr. John Bailey, I have the honor of stating:

First. That Mr. Bailey was appointed a clerk in the Department of State on the first of October, 1817.

Second. That his letter, resigning that appointment, was dated the 21st, and received by me the 23d of October, 1823. His resignation was immediately accepted, and an appointment made to supply his place.

Third. The duties performed by Mr. Bailey were those of a clerk, at the salary of 1,600 dollars a year, that being the highest salary, next to that of the chief clerk, allowed by law. They were different at different periods of his service. During the two or three last years, he had charge of the diplomatic correspondence; the most important and confidential portion of the duties of the office.

Fourth. A certificate of appointment is always given to the clerks in the Department, appointed by authority of law. A copy of that given to Mr. Bailey is herewith delivered to the committee.

Fifth. Mr. Bailey's residence, at the time of his appointment, was in the state of Massachusetts, in the district which he has now been

elected to represent. On tendering to him the appointment of a clerk in the Department of State, I invited him, in the event of his accepting it, to repair to this city, to take upon him the performance of its duties, which he immediately did. His residence, during the time he held the office, was necessarily in this District; but he never, to my knowledge, exercised any of the rights of citizenship within the District. I always understood him as considering the state of Massachusetts as his home, and his residence here as merely temporary, and occasioned by his necessary attendance upon the duties of his office. At two different periods, he asked my opinion, whether I thought him *eligible*, as a Representative in Congress, for the district in Massachusetts to which he belonged? and I answered him, that I did. Upon one, or both, of those occasions, I mentioned to him the general reasons of my opinion, founded upon the common principle of national law, that the *animus revertendi*, or intention of return, constitutes the test of *domicil*, for the preservation of political rights, to persons absent from home; and, upon the practice conformable to this principle, in the commonwealth of Massachusetts, examples of which were within my own knowledge.

JOHN QUINCY ADAMS.

Washington, January 8, 1824.

In pursuance of authority, under the act of Congress, passed on the eleventh day of September, 1789, entitled "An act for establishing the salaries of the executive officers of Government, with their assistants and clerks," I do hereby appoint John Bailey, a Clerk in the Department of State.

Given under my hand, at Washington, this first day of October, 1817.

JOHN QUINCY ADAMS.

DEPARTMENT OF STATE,

Washington, 19th January, 1824.

SIR: In answer to the questions of Mr. Bailey, enclosed in your letter of the 19th inst. I have the honor of stating, as follows:

To the First. That I returned to the United States, from Berlin, in September, 1801, after an absence of seven years. I was elected a member of the Senate, of Massachusetts, in April, 1802.

Second. Mr. Eustis returned from the Netherlands, in the summer of 1819.

Third. Mr. Gore returned to the United States, from England, in 1804, and was elected Governor of Massachusetts in 1809.

Fourth. Mr. Benjamin Hichborn, and General William Hull, were both members of the Senate of Massachusetts, in the year 1802, with me. They had both, within five years before that time, been absent in Europe upon their private concerns. Mr. Hichborn's absence, had been of several years continuance.

I am, with great respect, sir, your very humble and obedient servant,

JOHN QUINCY ADAMS.

J. SLOANE, ESQ. *Chairman of the Committee of Elections of the House of Representatives.*

I have been acquainted with Mr. John Bailey, from my arrival in this city, in January, 1818, to the present time. He has resided in a public hotel, with occasional absences on visits to Massachusetts, until his marriage in this city, which took place about a year since; at which time, he took his residence with the family of his wife's mother, where he still remains.

With respect to the exercise of the privileges of a citizen, I know no act which, in this District, can be so entitled, unless it be the voting for city officers, at the annual elections, or holding an office in the corporation. I do not know that Mr. Bailey has voted in any case for city officers, and believe that he has never held any office of the corporation. I do not know what is the interest or property which Mr. Bailey has in Massachusetts, the supervision of which he claims as constituting his inhabitancy there.

CHARLES BULFINCH.

Sworn, and subscribed, before me, the 13th January, 1824.

J. SLOANE, *Chairman.*

STATEMENT OF Mr. BAILEY.

TO THE COMMITTEE OF ELECTIONS, H. R.

GENTLEMEN: It was suggested, when I first had the honor of meeting you in session, on the 7th instant, that the true question in my case, was the question, *quo animo?* What was my *intention*, relative to my residence at Washington? Was it intended to be *permanent*, or only *temporary?* If the latter, my inhabitancy in Massachusetts remained; if the former, it was lost.

I beg leave to state some facts bearing on the question, and to add a few remarks.

It is proper to remark, that those provisions of our constitutions and laws, which require inhabitancy as a qualification for holding office, have, in all parts of the country, it is believed, received a liberal, and not a rigid construction. And it is just that there should be a liberal construction; since there is scarcely the slightest danger of any extensive evil arising from it. We find, that, in those states where members of Congress are chosen in districts, it is very rare, indeed, that a person is elected who is not an inhabitant of the *district* in which he is chosen, though such inhabitancy is not at all a requisite. Equally rare, probably more so, would be the election of a person not an inhabitant of the state, even if the Constitution of the United States had not made inhabitancy a requisite.

The reason which led our predecessors to establish inhabitancy so generally as a requisite for holding office, was probably this: They had seen the enormous abuses which had taken place in *England*, connected with the election, to Parliament, of persons who were almost entire strangers to those whom they represented. Those members were very often the devoted, and often the pensioned supporters of a powerful ministry. In their minds, therefore, the ideas of non-inhabitancy and of ministerial influence, were intimately associated. Hence, the provision of inhabitancy was almost universally ingrafted into our constitutions; notwithstanding our more equal representation, the greater number and intelligence of our electors, and the idea, whether true or false, that each section of our country has its peculiar interests, rendered such a provision almost useless.

This view of the probable origin of a provision, which in this country seems unnecessary, shows, that the liberal construction, which by universal consent it receives among us, is a perfectly just and proper construction. The right of suffrage, and the settlement of

paupers, are construed more rigidly; and properly so. A loose construction of the former, would tend to defeat the will of a majority of the people; and of the latter, would impose on them improper pecuniary burdens. But, in the case of eligibility, neither of these evils can result.

This liberal construction is peculiarly proper, in relation to the *District of Columbia*. Stronger evidence of an intention to become a permanent inhabitant of it, than of any other part of our country, ought to be required, before such intention is presumed. It is subject to the *exclusive legislation* of Congress; of a body which is the legislature of Massachusetts, as well as of the District of Columbia. By coming to this district, I came under no new jurisdiction—the jurisdiction of no government, under whose jurisdiction I had not previously lived. Suppose I had been in the army or navy of the United States, and been stationed, solely and for several years, at an island in Boston harbor, subject to the exclusive legislation of the United States. Is it believed, that I should have ceased to be an inhabitant of Massachusetts? Yet, the jurisdiction is precisely the same. And though, the inhabitants of the District of Columbia have a right to elect charter officers, even this pittance of a right, is held at the mere sufferance of Congress. That body can at any moment revoke the right.

There are several points in the laws, regulating the District of Columbia, (such, for example, as the one giving to aliens the power of holding real estate,) which prove, that this district was intended as a great thoroughfare of the nation; an estate in joint-tenancy; a spot which should form, in a certain sense, a part or appendage of every state in the Union, and which is, therefore, placed under the exclusive jurisdiction of the common government of these states.

Thus, the very condition and uses of the District of Columbia, show the propriety of a liberal construction of the doctrine of inhabitancy, in relation to persons employed in it, by the Government.

Another ground of liberal construction, is the fact, that there is no other person claiming the seat, which, it is alleged, ought to be vacated. Were there such a person, liberality to the sitting member might be injustice to him. But none such is found. To vacate the seat, would necessarily leave the district without representation for a portion of the session. A liberal construction, therefore, gives effect to the right of representation, without injustice to a rival candidate.

If any thing could further show the propriety of a liberal construction in this case, it would be the *clandestine* and *novel* origin and progress of the remonstrances before the committee, tending to prove, that the whole complaint originated, and has been pursued, from *personal motives*. Several weeks before the meeting of Congress, a large number of blank remonstrances were printed, and circulated, *anonymously*, through the post office, addressed to the municipal officers, and other persons, in the twenty-six towns, into which the district is divided, with a manuscript request on the margin, to those persons, to obtain signatures, and send them to some member of Congress from the state.

About a week after the commencement of the session, two of these papers, together containing twenty-six signatures, were received by a member, in an *anonymous* letter, requesting him to present them to the House; and they were presented and committed before I knew of their existence. Though this letter had only a fictitious signature, the member who received it is confident that he knows the hand writing. And what shows that the remonstrances were got up from personal motives, and not from zeal to preserve the constitution inviolate, is the fact, that the name of the undoubted writer of this anonymous letter does not itself appear on either remonstrance. Another fact is, that, at the election, the writer of this anonymous letter received nearly the same number of voters in his own town, as there were names on the remonstrances, which were also from the same town.

When, therefore, we consider, that even the genuineness of the signatures is questionable, as they came through an anonymous, and therefore irresponsible channel; that, waiving this objection, still there are but *twenty-six* remonstrants, equivalent to one elector, in each town, in a district which has several thousand electors; that they are but few more in number than the votes given at the election for the person who obtained and forwarded the signatures, and that they merely express their belief that the person elected was not an inhabitant of the state, sustaining the allegation by no proof whatever, while a contrary belief was expressed, by a thousand electors, in the fact of his election: when we consider all these circumstances, we see much to convince us that these remonstrances originated in personal motives, and very little to convince us that papers, of so informal and questionable a character, are entitled to great respect from the House or its committee.

One of the oldest, most experienced, and best informed members of the House, on hearing the circumstances, expressed his belief, that *no instance* could be found in which papers of such a character were ever even *received* by the House. If they should not only be received, but be made the ground of the dismission of a member from the House, it would be still more remarkable.

These circumstances, aided by the general reason in favor of a liberal construction before noticed, render it proper, that the clear and undeniable will of the people of the district should not be set aside on any other than the most unequivocal grounds. That such grounds do not exist, is, it is believed, most manifest.

The question is, was my residence in Washington intended by me to be permanent, or only temporary? If permanent, my inhabitancy in Massachusetts was lost: if temporary, it was not lost. Mere residence, of itself, cannot destroy inhabitancy. This all admit. Innumerable examples and authorities prove it. Before we infer the loss of inhabitancy, we must shew some facts indicating intention of permanent residence.

The testimony of Mr. Adams, that he always understood me as considering Massachusetts my home, and my residence here as merely temporary, joined with the testimony of both Mr. Adams and Mr.

Bulfinch, (witnesses who were not called at my request) that they never had knowledge of any exercise by me of the political rights of a citizen of the District of Columbia, is satisfactory proof in my favor, unless some opposite proof can be brought to countervail it.

No such proof, I am sure, can be found. On the contrary, my whole course, during my residence here, has been in entire conformity to this testimony. *And I declare, solemnly and distinctly, that it was always my intention to continue an inhabitant of Massachusetts.* In the civil concerns of the District of Columbia, I have never exercised a single privilege, or been required to perform a single duty of an inhabitant; have never held a local office, or given a vote, or even had the right of voting, and have never owned any real estate, or paid or been assessed in any tax whatever. I was at a public hotel till within less than a year before my election, when I was invited to reside in a private family as long as it should be pleasing, keeping, while there, no house, table, or domestics, but living as one friend would live while on a visit to another friend. On repeated occasions, in conversation and letters, I have expressed the temporary nature of my residence here, and my most intimate friends have distinctly so understood it.* My library, consisting of between seven and eight hundred volumes, and constituting nearly all my visible property, I left chiefly (taking with me only a small part for temporary use) in the house of my father, where I had resided, and where they still remain for my use on my return. There, also, I have spent a portion of nearly every autumn, previous to that in which I was elected.

Of these facts I most freely challenge contradiction. They cannot be contradicted with truth. They are already corroborated by testimony now before the committee. Unless, therefore, some testimony should be obtained, which I am sure cannot be obtained from honest persons, the conclusion is irresistible, that my intention was to make a merely temporary residence. And I venture to say, that, if inhabitancy is not retained by an absentee for a term of years, under such circumstances as these, it would be impossible for him to retain it under any circumstances whatever.

That the inhabitants of Norfolk District considered me as also an inhabitant, is proved by several facts. A few days before a meeting of citizens to nominate a candidate, I was written to, and asked if I were willing to be supported as a candidate. The reply was affirmative. The meeting was probably the largest ever held in the district on a similar occasion, every town having been represented, and the nomination was supported by nearly three-fourths of it. And, at the election, though there were several candidates, the successful one had a decided majority over all the others, in coincidence with the principle governing elections in the eastern states. These facts occurred, too, in a state in which there has never been known a single instance of the election to Congress of a person who was not an inhabitant of

*Proofs of this have been produced; but, as the committee have since abandoned the ground that the question is that of *quo animo*, the documents are not printed, as was intended.

the very *district* in which he was chosen. They clearly shew the opinion of that portion of the Union, who probably best knew the nature of my connection with it, and who certainly were most interested to prevent an improper choice. They undoubtedly supposed, that a person who was a native of that district, whose immediate connections nearly all resided in it, and who had represented a portion of it in the state legislature for several years, could not be held to have expatriated himself, without some clear and unequivocal proof, of which none whatever existed. They had seen me go to a neighboring state, Rhode Island, and spend four years at college in my education, and then return to my native district. They had seen me, at the end of a year, revisit the same college, and spend six years there as one of the instructors, and then return again to my native district. And though they had, at the time of the election, seen me employed nearly as long by the Government at Washington, as I had been, in the second instance, in Rhode Island, they did not doubt that my attachment to my native district continued, and that my avowed intention to return was sincere; nor could they, for a moment, doubt that the House of Representatives of the United States would give the same liberal construction of the doctrine of eligibility, which all preceding Houses, and all our state legislatures, except when under violent excitements, had uniformly given.

The principle of my eligibility is supported by numerous precedents. Precedents, on this point, though not abstractly and absolutely conclusive, are yet of great weight. They are important as guides of action to individuals. Suppose a person elected to a seat in Congress, under circumstances creating some doubt of his eligibility; and suppose he holds, at the time, an office incompatible with such seat, which he must resign if he accept the latter. He looks to precedents in similar cases, and finds that they all sanction the belief of his eligibility, and he accordingly resigns his previous office, and with it his immediate means of living, on the faith of these precedents. It would be plainly improper to set aside all these precedents, and eject the member from his seat, without the clearest and strongest reasons.

It is admitted that no precedents are found, of cases exactly similar to the present. In truth, no two cases can ever be found exactly similar. The object then is, to find the cases most resembling the one in question. These cases, in every instance that has met my view, without an exception, are in my favor. Not a single case, resembling the present, has been decided unfavorably.

The Constitution of the United States declares, that a person elected a member of the House of Representatives, must be an inhabitant of the state in which he is chosen; leaving each state, it is presumed, to determine what shall be its own terms of inhabitancy. What are the terms of inhabitancy in Massachusetts?

The Constitution of Massachusetts, having been formed before the Constitution of the United States, and even before the completion of the Old Confederation, does not provide for cases of employment in the service of the United States; nor do its laws, it is believed,

make any such provision. In practice, however, many cases have occurred: and they all, without one exception, speak the same language, that of liberal construction.

The present Governor of Massachusetts resided several years in Europe, as a Minister of the United States; and in about four years after his return was elected the Governor, though the Constitution requires inhabitancy for seven years next preceding the election. Mr. J. Q Adams resided seven years in Europe, in a similar capacity; and in a few months after his return was elected to the Senate of Massachusetts, though the Constitution requires inhabitancy for five years next preceding.

It has been said, that the case of a Minister of the United States is not applicable to the present question, as he is said to "carry his country with him." It is scarcely to be believed, that, at the present day, such a technicality, a mere legal fiction, will be seriously urged to defeat the clearly expressed will of the people. The utmost that can be said in favor of the Minister is, that he is exempt from the ordinary operation of the laws of the country in which he resides. But, it might be doubted whether the exemption is much greater, than has been enjoyed in the case in question. But, suppose the exemption greater: how is it possible that a little more or less of such exemption shall have so important a bearing on a person's political rights, that one shall retain his inhabitancy five thousand miles distant from his residence, while another loses his inhabitancy at a distance of five hundred? The distinction is indefensible.

It has been said, that the tenure of office is different. In what consists the difference? One is appointed by the President and Senate, the other by the Head of a Department. Both are removable at pleasure: both have the privilege of resignation: both are subject to the abolition of office: and both continue for life, when neither dismission, resignation, nor abolition of office takes place. There is, therefore, no difference in the tenure of office, that can create a difference of political rights.

It has been said, that one has an appointment of *honor*, while the other has not, Under a *Republican* Government, this distinction seems not at home. It cannot be correct. The *grade* of the office cannot vary the *rights* of the man.

It may be said, that we are bound to presume in a Minister an intention of returning when he gives up the duties of his station; as his residence afterwards in a foreign country, would be attended with fewer political privileges, than he would enjoy in his own country, as well as by a deprivation of the society of his relations and friends. The same intention, we are equally bound to presume, in the case of giving up employment at Washington; as a further residence in it would be attended by a similar loss of former society, and by a still greater diminution of political privileges, a mere shadow of privilege being all that remains.

Under every aspect of the subject, therefore, no reason presents itself for viewing the case of a Minister as different from the case in question.

But other cases than those of Ministers are found. Mr. Gore, after having resided many years in England, as a Commissioner under our treaty with Great Britain of 1794, returned in 1804, and was elected Governor of Massachusetts in 1809, notwithstanding the requisition of inhabitancy for *seven* years next preceding. He was not a Minister, and, therefore, carried no country with him. Suppose his election had been contested on the fact of his absence: what would have been the reply? It would have been said, and said justly, that absence, without any evidence of an intention of making it permanent, could not destroy previous inhabitancy, But no contest was attempted. Mr. Hichborn returned from Europe, after an absence of several years on *private* business; and was elected to the Senate of Massachusetts in 1802, long before the expiration of the five years. And in 1818, Mr. Crowninshield was strongly supported as a candidate for the office of Governor, without a question of his eligibility being made, though he was at that time, and had been for several years, residing at Washington, and discharging his duties as Secretary of the Navy.

The person whose seat is now contested, returned to his native town in October, 1814, after residing several years as an instructor in the college at Providence, R. I. In May, 1815, he was elected to represent that town in the state legislature, though inhabitancy in the town, for one year next preceding the election, is required. Some of his political opponents took the advice of an eminent lawyer, on the question of contesting the election. The advice was against it, and nothing was done. This is a stronger case than the present, as the employment was private, and not by the Government. But, as it was in a literary institution, unaccompanied by civil duties or rights, it was deemed that inhabitancy in his native town was not destroyed by it.

These instances prove, that if the present case were to be decided by the rules and practice of Massachusetts, no doubt of eligibility would exist. Not a single precedent to the contrary is found.

If it be said, that it must be decided by the rules and practice of the United States, and not of the particular state in which the person is chosen, the precedents are equally strong. Not one is found unfavorable.

We find a member of the present Congress holding his seat uncontested, though he was elected while residing in Spain, as Minister of the United States; though he had been a resident of that country for several years previous—and though his family were residents of the District of Columbia for the first two years of that period, and of pain for the remainder.

We find Philip Barton Key holding his seat many years ago, under circumstances which prove, that a liberal construction of the doctrine of inhabitancy is the practice of Congress.

We find that, recently, Captain Hull, of the Navy, who was at the time, and had been for eight years, a resident of Charlestown, in Massachusetts, was styled, in the proceedings of a court of the United States, as of Connecticut, which was his native state; and that a plea in abatement, which was at first filed, was afterwards abandoned as untenable.

We find the Heads of Departments, though residents of the District of Columbia, universally considered as inhabitants of the states, respectively, of which they were inhabitants before appointment. We find Mr. Crawford nominated by the President to the Senate, and commissioned, as of Georgia, though he had for nearly two years before been a resident of the District of Columbia. We find Mr. Rush nominated and commissioned, as of Pennsylvania, though he had been for several years a resident of the District of Columbia, as Comptroller of the Treasury. And what is more emphatically to the point, we find Mr. Pleasanton, to whose situation, in the Department of State, I succeeded, nominated and commissioned, as of Delaware, though he had been for *sixteen* years a resident of the District of Columbia.

We find our greatest and most experienced statesmen, men who stand in the front rank of past and present official stations, as well as of intelligence and integrity, expressing freely and distinctly and unitedly the opinion, that simple employment at Washington does not at all destroy previous inhabitancy elsewhere.

We find, in the constitution of *Kentucky*, the following principle: "Absence on the business of this state, or the United States, shall not forfeit a residence once obtained." The same principle is recognized, to a greater or less extent, by the constitutions of *New York*, *Pennsylvania*, *Delaware*, *Ohio*, *Indiana*, *Illinois*, *Tennessee*, *Georgia*, *Louisiana*, *Mississippi*, and *Alabama*. The general election law of *Virginia* has the following enactment: "No person inhabiting within the District of Columbia, or elsewhere, not within the jurisdiction of this Commonwealth, shall be entitled to exercise the right of suffrage therein, except citizens thereof, employed abroad in the service of the United States, or of this Commonwealth, and whose foreign residence is occasioned by such service."* This law is more specially deserving of notice, as it respects not eligibility, but the right of suffrage, which is universally, and very properly, construed more rigidly than the former.

We find, in the constitution of the United States itself, the doctrine plainly implied, that inhabitancy and actual residence are entirely distinct. That constitution requires that a Senator or Representative in Congress shall be an *inhabitant* of the state he shall represent. But, in the case of President, it requires that he shall have been fourteen years a *resident* within the United States. Uniformity would have demanded either that *residence* should be the requisite for a Senator or Representative, or that fourteen years of *inhabitancy* should be the requisite for a President. But, as the high importance of the trust reposed in a President of the United States, makes long familiarity with the nature and operations of our institutions indispensable, and as a person might be for fourteen years an *inhabitant* of the United States, in the legal sense, without being an actual *resident* for half that period, it was judged proper that actual *residence* should be the

* Revised Code of Virginia Laws, vol. 1, page 156.

test. And as, on the other hand, some of the most intelligent inhabitants of a state may be temporarily absent in the service of their country, at the time when a Senator or Representative is to be elected, it was judged proper that *inhabitancy* only, and not actual residence, should be the test.

This view is supported by the journals of the convention of 1787. We there find, that, in the early drafts of the constitution, the qualification for a Representative or Senator was *residence*, but afterwards changed to *inhabitancy*, while that for a President was at first inhabitancy, but afterwards changed to residence. The fact is remarkable, and shows that the framers of the constitution made a clear distinction between inhabitancy and mere residence.

These facts, showing the practice of Congress, of the Executive, and of the Courts, the opinion of our greatest and wisest men, and especially the general will of the nation, as expressed in their constitutions and laws, comprise a body of public sentiment, which is irresistible, while not a single important fact is found favoring the opposite doctrine. If these facts be added to the positions already established, that the great question is that of *intention*, and that my intention was obviously that of a temporary residence, it is believed that the committee and the House will be unanimous in the opinion that my eligibility is established.

If, however, any doubt remains, it must be removed by one rule of decision, which, in a free government, should never be disregarded. *The distinctly expressed will of the people ought never to be set aside on a merely doubtful principle.* The principle should be *clear indeed*, which is vindicated at the expense of this will. As I am sure that the principle is *not* thus clear *against* me, I cannot, for a moment, doubt that the decision of the committee and of the House will give the will of the people its due effect.

These remarks are grounded on the point suggested when I had the honor of meeting the committee before, that the great question to be decided is the *intention*. If any other point be deemed important, I respectfully request that I may be informed.

JOHN BAILEY.

January 28, 1824.

POSTSCRIPT.

GENTLEMEN: The preceding remarks were grounded on the understanding, that the real question before the Committee was the question *quo animo*. Yesterday, however, I was informed, for the first time, that there was a change of opinion in the Committee; and that they now considered that question as not applicable to my case. Though I am still persuaded, that that is the real and only question, and am fortified in this persuasion, by the highest authorities, all concurring to establish the point; yet, some observations will be made in reply to several other points.

1. It is said, that though I am unquestionably a *citizen* of Massachusetts, yet am not an *inhabitant*, there being a distinction between the meanings of those two terms.

Perhaps it would be difficult to draw very clearly this distinction; since the terms appear to be used quite synonymously in the articles of the confederation, in many of our state constitutions, and in numerous works of high authority. But, suppose the distinction exists. I have attempted no argument whatever, on any supposed identity of their meaning. I have adduced precedents, and added some observations, to show that I am an *inhabitant* of Massachusetts, according to the constitutional sense of the term. If the precedents and observations have any force, they tend to prove my inhabitancy, without any attempt to blend this question with that of citizenship.

2. It is said, that the constitution of the United States required inhabitancy of the state, in order to prevent the influence of the state governments from being merged in that of the general government.

We will not stop to enforce the remark, that this reason applies as strongly to all our foreign ministers, as to the case in question. The conclusive reply to the proposition is, that nearly all the states, whose constitutions have been framed since that of the United States, have expressly provided, that absence from those states in the service of the general government shall *not* be a disqualification for certain given offices. And *Virginia*, whose zeal in defence of the rights of the states, is second to none, has established the liberal principle, that its citizens shall enjoy, even the more rigidly construed right of suffrage, though residing in the District of Columbia, provided such residence is occasioned by their employment in the service of the United States.

It would be a singular spectacle, to see the general government become the champion of the rights of the states, in opposition to the explicit regulations of the states themselves.

3. It is said, that a person who is for years absent from his home, loses his inhabitancy, unless he leaves there something which requires his attention or supervision.

It may properly be asked, in the first place, if this be not a perfectly arbitrary principle, unsupported by any authority whatever?

It may be said, in the next place, that the position is erroneous. No such fact is *essential*. It is merely one of the many evidences, tending to prove an intention to return. The intention may often, however, be sufficiently proved by other circumstances, where this does not exist.

In the next place, it may be replied, that the fact does exist, in the case it question. Nearly all my library was left; which fact is perfectly unaccountable, except on the ground that I intended to return. Though this may seem trifling property, to those whose fortunes are splendid, yet, as it happened to be the owner's all, its humble nature is as significant in its application to the present question, as would be the treasures of the affluent.

4. It is said, that merely an expression of an intention to return to one's former residence, is not sufficient to sustain inhabitancy.

This has never been contended. The principle asserted is, that when such intention has been expressed, and when the whole train of circumstances unite to corroborate that expression, particularly the total disconnection with the civil concerns of the temporary place of residence—then, previous inhabitancy is not lost.

5. It is said, that inhabitancy, in the meaning of the constitution, is, *the mere fact of living* at a place; as a head of a department lives at Washington; as a minister of the United States, lives at a foreign court; or as a member of Congress lives at Washington, during the session.

That such a doctrine as this, should be seriously entertained, is indeed remarkable. Its hostility to all known authorities and precedents, to the express provisions of our state constitutions, and to the clear opinions of our soundest statesmen and jurists, is too glaring for comment.

We must then revert to the original question, and the real question in the case—Did I take up my residence here, with the intention of making it my permanent residence, or not? To attempt to evade this question, and substitute some other, the fiction of our own minds, is doing injustice to the rights of the community.

If we go to foreign authorities, (though it is doubted whether the question be not too purely American,) we find the following:

"The *domicil* is the habitation fixed in any place, with an intention of always staying there. A man does not then establish his domicil in any place, unless he makes sufficiently known his intention of fixing there, either tacitly, or by an express declaration." *Vattel*, b. 1. ch. 13. sec. 218.

If we take the highest American judicial authority, we have this:

"*Domicil* is a residence in a country, with the intention, either tacitly or expressly declared, of making it a permanent place of abode."

"If a party has made no express declaration, as to his intention of permanently residing in a country, his acts must be attended to, as affording the most satisfactory evidence of his intention." 8 *Cranch* 278, 279.

Authorities might be multiplied, to prove, that this *intention* has always been held to be the true test of inhabitancy. All our tribunals, whether legislative or judicial, prove it. To create a *new* prinple, for the present case, would be manifestly unjust.

JOHN BAILEY.

February 17, 1824.